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APPELLATE
CRIMINAL.
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29 C. 782.

proceedings; and though there is no evidence to show that it was extorted; and we have the Magistrate's statement that it was voluntarily made, the character of the statement made certainly does not impress us so as to make us believe that it was freely made. We, moreover, strongly disapprove of the manner in which, as already stated, the Sessions Judge has asked the jury to consider the variation in his statement from that of the approver.

Under such circumstances we think that it is not necessary in the ends of justice that he should be retried.

We accordingly direct that he be also acquitted and released.

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29 C. 793.

[793] ORIGINAL CIVIL.

Before Mr. Justice Stephen.

PROTAP CHUNDER DEY v. TOOLSEY DASS DEY.*
[30th June 1st July, 1902.]

Arbitration—Reference to arbitration by the parties—Award—Leave to file by plaintiff, application for—Title-deeds—Discretionary power of Court to restrict award for reconsideration to arbitrator—Arbitration Act (IX of 1899), s. 13—Civil Procedure Code (Act XIV of 1882), ss. 506 to 525.

A and B referred certain matters in dispute between them to arbitrators under the Arbitration Act (IX of 1899), and an award was made by which A was ordered to pay a sum of money to B, upon B delivering up certain title-deeds. A thereafter applied to the Court to have the award filed. B objected upon the ground that there was no finding that he was in possession of the title-deeds, and asked to have the award remitted.

Held, that an order in the award on A to pay a sum of money to B, on the latter giving up certain title-deeds (possession of which was denied by him) could not amount to a finding that B was in possession of the title-deeds.

Held, further, that ss. 506 to 522 of the Civil Procedure Code apply to arbitrations in a suit.

THIS was an application made by the plaintiff to file an award, which had been referred to arbitration. The award ordered that the plaintiff was to pay a sum of money to the defendant upon the latter delivering up certain title-deeds to the plaintiff.

The defendant denied ever having been in possession of the title-deeds, and asked the Court to remit the award back to the arbitrators for reconsideration, alleging that he was not present during the arbitration proceedings, and that the question of possession had only been mentioned to the arbitrators, who never enquired judicially into the matter, and there was no finding that he was ever in possession of the title-deeds.

[794] Mr. Garth (with him Mr. Chakravarti and Mr. N. Chatterjee) for the plaintiff.

I apply on behalf of the plaintiff for leave to file an award. The arbitrators made their award in writing on 3rd February 1902. See s. 9 of Belchambers' Rules and Orders.

The defendant now swears that he never had the title-deeds. He comes here at the last moment with a new story, alleging that this matter was not raised by the arbitrators.

* Original Suit No. 269 of 1902.

S. 520 of the Civil Procedure Code is intended as the rule for remitting awards, and s. 521 sets out the grounds for setting aside an award.

I submit that under the Arbitration Act the Court must exercise some discretion. The arbitrators said there was everything to show that the title-deeds were with the defendant.

The Court would not remit the award on the ground that the defendant has changed his mind and that he is not satisfied. The discretion of the Court must be on the principles laid down by the English Law.

The defendant cannot now say he wants to have determined anything that was not referred to the arbitrators. See *Worsdell v. Holden* (1) and *Ghulam Jilani v. Muhammad Hussan* (2).

No grounds have been shown for amending this award, and, I submit, it cannot be done.

There has been no misconduct on the part of the arbitrators. I therefore ask for a decree in accordance with the award ; but, if the defendant has not got the title-deeds, then I ask for a quantum indemnity.

Mr. *Dunne* (with him Mr. *A. Chowdhury*) for the defendant.

The sections in the Civil Procedure Code do not affect us at all except ss. 520 and 521, and the Arbitration Act takes away the above provisions of the Code. There is nothing here limiting the Court to commit an award for reconsideration by the arbitrators. See ss. 13 and 14 of the Arbitration Act. You cannot refer on a specific point, but on the whole award.

[795] [Mr. *Garth*. S. 520 of the Code makes certain provisions and that section remains as it is, the Arbitration Act does not alter the section at all.]

In this case there is no question of bias ; see *Mutty Lall Jhoonjhoonwalla v. Jani Das Jhoonjhoonwalla* (3) I say there has been no decision and no trial upon the particular point by the arbitrators. My ground is that the arbitrators have made an order without my being heard.

It was the plaintiff who made statements to the arbitrators that he could not say whether the defendant had the documents or not. The award was made without the defendant being present.

Ss. 520 and 521 of the Code have reference to an award made by s. 508 of the Code. Under s. 526 of the Code, the Court is bound on the grounds under ss. 520 and 521. Ss. 520 to 526 of the Code are cut out by the Arbitration Act of 1899. The Arbitration Act has no relation whatever with the portions in the Code. The Court must go upon the principles of English Law. I submit, therefore, that this award should be remitted.

Mr. *Garth*. In reply.

STEPHEN, J. This is an application to file an award made under the Arbitration Act of 1899. An objection has been taken to the award, and I have been asked to remit it to the arbitrators. It is argued, however, that I have no power to do this on account of s. 520 of the Civil Procedure Code under which an award may not be remitted except on certain grounds which do not exist in this case. I do not think, however, that s. 520 applies to arbitrations under the Arbitration Act. Reading the Code and the Act together, it appears to me plain that ss. 506 to 522 of

(1) (1859) 1 Law Times N. S. 14.

(2) (1902) I. A. 51.

(3) Unreported case, 28th November

1901. (Appeal No. 12 of 1901, Suit No. 26 of 1900.)

1902
JUNE 30 &
JULY 1.

ORIGINAL
CIVIL.

29 C. 793.

the Code apply to arbitrations in a suit and ss. 523 to 526, now superseded by the Arbitration Act, to arbitrations initiated by the parties.

I therefore consider that I have a direction to remit this award for the reconsideration of the arbitrators under s. 13 of the Arbitration Act.

[796] The ground on which the application to file is resisted and on which I am asked to remit this award is, that the award orders that the plaintiff shall pay a sum of money to the defendant on the latter delivering up certain title-deeds, of which he denies having possession. Does this amount to a finding that the defendant is in possession of the title-deeds? In my opinion, looking to the facts of the case, it does not. The affidavits show that though the question of possession was mentioned, it was never judicially enquired into, and that the arbitrators never really had their minds directed to the point, while the arbitration was proceeding, and the arbitrators themselves entertain different views, as to whether or not they decided the point. The award must therefore, be remitted to them to make a fresh award.

Mr. *Chowdhry*. I ask the Court to indicate to the arbitrator that they are to reconsider the part of the award which deals with the possession of the title-deeds.

Mr. *Chatterjee*. I object and submit it is already mentioned in the judgment: there should be no order on the arbitrators.

STEPHEN, J. I do not like to do that.

Mr. *Chowdhry*. I ask for costs.

STEPHEN, J. I make no order as to costs.

Attorney for plaintiff: *K. N. Gangooly*.

Attorney for defendant: *M. N. Bonnerjee*.

29 C. 797.

[797] APPELLATE CIVIL.

Before Mr. Justice Pratt and Mr. Justice Mitra.

MUDIT NARAYAN SINGH *v.* RANGLAL SINGH.*

[13th and 16th June, 1902.]

Hindu Law—Mitakshara—Joint family—Junior or dependent member of family—Karta—Mortgage of family property—Necessity—Zaripeshgi lease—Partition.

Hindu law authorizes a younger member of a Mitakshara joint Hindu family to alienate or otherwise deal with immoveable property belonging to the family, for family necessity, whenever he is put forward to the outside world by the elder members of the family, as the managing member.

The disruption of a joint family cannot be effected by an order of Court against the intention of the parties, unless it is followed by an actual conversion of the joint tenancy into a tenancy in common or an actual partition by metes and bounds.

THE plaintiffs, Mudit Narayan Singh and others, appealed to the High Court.

The plaintiffs and the *pro forma* defendants Nos. 3 to 7 were alleged in the plaint to be members of a joint Hindu family, governed by the Mitakshara Law. Eight annas of mouzah Peota was the joint ancestral

* Appeal from Appellate Decree, No. 881 of 1900, against the decree of H. Holmwood, Esq., District Judge of Gaya, dated the 6th of February 1900, affirming the decree of Babu Jadu Nath Dass, Subordinate Judge of that district, dated the 1st of September 1899.